Mandated Benefits: A Behavioral Economics/Comparative Institutional Perspective

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Lawrence Summers, Some simple economics of mandated benefits, 79 American Economic Review (Papers and Proceedings 177 (1989)

Jonathan Gruber, The Incidence of Mandated Maternity Benefits, 84 American Economic Review 622 (1994)

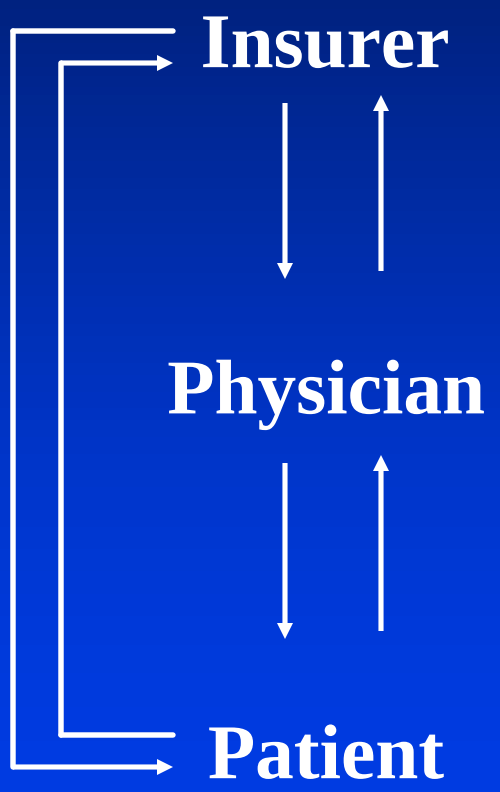
Russell Korobkin, The Efficiency of Managed Care Patient Protection Laws: Incomplete Contracts, Bounded Rationality, and Market Failure, 85 Cornell L. Rev. 1 (1999)

David A. Hyman, Regulating Managed Care: What's Wrong With a Patient Bill of Rights?, 73 S. Cal. L. Rev. 221 (2000)

Six Reasons To Mandate Benefits

1. Informational asymmetry
    a. Incomplete contracts
    b. Adverse selection
2. Cognitive bias: bounded rationality
    a. Complexity
    b. Emotion-laden decisions
    c. Optimistic bias
3. Unequal bargaining power/employers as agents
4. Merit good
5. Externalities
6. Managed care

Types of Mandates



Type I

Type II

Type III

Type I Mandate

- **Any willing provider (Freedom of choice, Due process, Mandatory admittance)**
- **Gag clause prohibition**
- **Restrictions on compensation mechanisms (bonus/withhold/inappropriate care)**

Type II Mandates

- Disclosure of incentives
- Disclosure of qualifications/results
- Balance billing prohibitions

Type III Mandates

- Direct access to specialists
- Mandatory point of service option
- Mandated coverage (post-partum, IVF, mental health parity, contraceptives)
- Expedited appeal (internal/external)
- Liability

Six Questions to Ask About Mandates

Who:	**Benefits?** **Pays?**
What:	**Is the cost? (direct and displacement)**
Where:	**Are we going with this?**
When:	**Do we decide whether we've made things better or worse?**
Why:	**Is it worth doing?**
How:	**Does it fare against the alternatives?**

Six Reasons To Be Skeptical of Mandated Benefits

1. Evidentiary Inadequacies:
   - Theory and past practice (HDC/ABMT; DTD – information/incentives/preferences)
2. Capture/provider protection
3. Institutional competence
   - Cost-benefit trade-offs
   - Real quality v. pseudo quality
   - Saliency bias (Anecdote-driven)
   - Coordination (Federal/State)
4. Moral hazard
5. Costing out mandates (One-off; $/covered life/month)
6. No free lunches

Five Problems with the Standard Critique of Mandates

1. Overstated costs: aggregate v. marginal cost of mandates – what coverage terms prevail in the (unregulated) market?
2. Displacement: binary v. continuous; real impact
3. Benefits of standardization
4. Symbolic benefits of legislation
5. Federalism

Where Does That Leave Us?

Pessimists: "I'm from Washington (or your state capital) and I'm here to help you."

Pessimists redux: "Maybe if it were done by angels."

Optimists: "The private market won't give people what they want, and mandates can fix these problems at no cost to the taxpayers."

Where Does That Leave Us - 2

"In some circumstances, consumers might prefer to pay for benefits that the market for health insurance does not provide rather than enjoy a reduced level of benefits at a somewhat lower price. We have to pay for all the benefits that we wish to receive. But we can use government mandates to insure that we receive all the benefits for which we are willing to pay."

Korobkin, 85 Cornell L. Rev. at 88.

Where Does That Leave Us – 3

"It is understandable that managed care horror stories trigger outrage and a demand for additional regulations. However, any given rule or standard for making coverage and treatment decisions will necessarily have imperfections. So long as we have created the appropriate institutional arrangements - and there certainly remains much to do with regard to that goal - leaving well enough alone with regard to the specifics of the resulting coverage is likely to be sufficient unto the day. Such a strategy lacks the moral certainty of stringing up a few managed care desperados in black hats, but it will do more to improve the status quo than any ten patient bills of rights."

Hyman, 73 S. Cal. L. Rev. at 275.